

The Flinn Report

Illinois

Regulation

Claire B. Eberle, Editor

700 Stratton Bldg., Springfield IL 62706

Joint Committee on Administrative Rules

Illinois General Assembly

217/785-2254

www.ilga.gov/commission/jcar

VOL. 29

February 4, 2005

Issue 6

Illinois Regulation is a summary of the weekly regulatory decisions of State agencies published in the Illinois Register and action taken by the Illinois General Assembly's Joint Committee on Administrative Rules. Illinois Regulation is designed to inform and involve the public in changes taking place in agency administration.

New Regulations

☛ SEX OFFENDERS

The SEX OFFENDER MANAGEMENT BOARD repealed "Sex Offender Management Board Standards and Guidelines for the Evaluation, Treatment and Monitoring of Adult Sex Offenders" (20 Ill Adm Code 1900) and adopted a new Part titled "Interim Sex Offender Evaluations and Treatment" (20 Ill Adm Code 1905), both effective 1/24/05. Companion emergency rule-makings became effective 5/27/04 and expired 10/23/04. The repealed Part 1900 required the Board to develop separate guidelines and standards for programs that counsel juvenile and adult sex offenders who are placed on probation, committed to Department of Corrections or Department of Human Services facilities, or placed on mandatory supervised release or parole. The repealed Part also provided standardized procedures for evaluation, treatment, community monitoring, and offender polygraphing. Minimum qualifications for evaluators, treatment providers, and detection-of-deception examiners were specified. However, under the statute implemented in Part 1900, sex offenders and criminal justice agencies were not required to comply with Board policies. New Part 1905 implements Pub-

lic Act 93-616, which is not advisory but rather requires compliance with Board regulations. Specifically, Part 1905 adds definitions, increases the size of the Board from 20 to 24 persons, requires felony sex offenders to be identified and evaluated, specifies treatment as part of felony sex offender sentencing, requires all evaluation and treatment providers to be approved by the Board, creates the Sex Offender Management Board (SOMB) fund, establishes criteria for coordinating the fund with other available monies, and provides that minors convicted of a sex offense are required to submit to a sex offender evaluation. Therefore, new Part 1905 modifies most of what was contained in the repealed Part 1900 to reflect these statutory requirements. The rulemaking also establishes procedures for evaluators and treatment providers to obtain Board approval and provides standards for conducting evaluations and providing treatment to sex offenders through 7/1/05. Application procedures for an "interim" service provider list are explained, as are specific qualification criteria for each service category, approval and removal methodology, and "interim" standards of practice. A change since

(cont'd next page)

Proposed Regulations

PRESCRIPTION DRUG PLAN

The DEPARTMENT OF CENTRAL MANAGEMENT SERVICES proposed an amendment for "Senior Citizens and Disabled Persons Prescription Drug Discount Program" (80 Ill Adm Code 2151) to reduce the annual program participation fee from \$25 to \$9.99 and to allow the DCMS director to waive the fee for a specified period of time based upon actual administrative costs. This program was begun in 2004 to enable Illinois citizens 65 years of age or older and disabled persons to purchase prescription drugs at discounted prices.

Questions/requests for copies/comments until 3/21/05: Gina Wilson, DCMS, 720 Stratton Office Bldg., Springfield IL 62706, 217/785-1793.

☛ HOME SERVICES & VOCATIONAL REHABILITATION

The DEPARTMENT OF HUMAN SERVICES proposed amendments for "Services" (89 Ill Adm Code 590) and "Provider Requirements, Type Services, and Rates of Payment" (89 Ill Adm Code 686). The 590 amendments specify that the currently allowed, one-time, "unusual expense" for a client's van purchase that reduces his or her financial participation applies also to purchase of the van by the client's spouse or parents. Also, the van must be purchased within the

(cont'd page 4)

NEW REGULATIONS: Rules adopted by agencies this week.

PROPOSED REGULATIONS: Rules proposed by agencies this week, commencing a 45-day First Notice period. Public comments must be accepted by the agency for the period of time indicated.

☛: Symbol designating rules of special interest to small businesses, small municipalities, and not-for-profit corporations. Agencies are required to consider comments from these groups and minimize the regulatory burden on them.

QUESTIONS/COMMENTS/RULE TEXT: Direct mail or phone calls to the agency personnel listed below each summary. Providing volume and issue number of The Flinn Report or the Illinois Register will expedite the process. Some agencies charge copying fees. However, copy requests do not have to be made under the Freedom of Information Act.

New Regulations

1st Notice replaces the requirement that various service providers have a bachelor's degree or higher in a "behavioral science" with a list of the specific types of degrees that are acceptable. Not-for-profit organizations that provide mental health or treatment programs for sex offenders will be affected by these rulemakings.

Questions/requests for copies: Cara Smith, SOMB, 100 W. Randolph, 12th Fl., Chicago IL 60601, 312/814-2970.

MOTOR FUELS

The DEPARTMENT OF AGRICULTURE adopted amendments for rules titled "Motor Fuel Standards Act" (8 Ill Adm Code 850), effective 1/24/05, to revise rules regarding motor fuel labeling, measuring, pricing, and quality complaints. The rulemaking allows motor fuel quality complaints to be submitted to the Department by telephone, writing, or e-mail rather than on a specific DOA form, and the complainant is no longer required to name the types of tests he or she wants done on the sampled product or the laboratory where the testing should occur. The Department will investigate all complaints and sample the product, if applicable, before responding in writing to the complainant. Fees that were previously the responsibility of the complainant (if the claim turns out to be unfounded) or the most recent seller of the motor fuel to the complainant (if the claim is true) are stricken. A new regulation specifies that if it is discovered during testing that a motor fuel does not meet the American Society for Testing and Materials standards, the most recent seller of the motor fuel must pay \$350 to cover administrative, laboratory, and sampling fees. In addition, a section requiring a label on a motor fuel dispensing device to identify the maximum percentage by volume of ethanol, methanol, and co-solvent in the motor fuel is stricken. Petroleum product marketers and gasoline station owners and operators are affected by this rulemaking.

Questions/requests for copies: Linda Rhodes, DOA, State Fairgrounds, Springfield IL 62794-9281, 217/785-5713, Fax 217/785-4505.

TEACHER CERTIFICATION

The STATE BOARD OF EDUCATION adopted amendments for "Public Schools Evaluation, Recognition and Supervision" (23 Ill Adm Code 1), effective 1/24/05. A companion emergency rulemaking because effective 9/27/04. According to SBE, these amendments correct inadvertent errors or omissions in amendments for this Part that took effect on 6/1/04. For example, specific coursework in reading and for library information specialists that must be included in 18 semester hours of field work is added; work experience required for teachers and coordinators in career and technical education programs is specified; and applicability of the provisional vocational certificate and the more narrowly applied temporary provisional vocational certificate is explained. In addition, the rulemaking implements Public Act 93-679 by allowing an initial certificate to be renewed until the certificate-holder acquires 4 years of teaching experience. (Previously, an initial teaching certificate was nonrenewable.) Also, a category of certificate is added for "interim school counselor intern" in grades kindergarten through 12.

Questions/requests for copies: Dennis Williams, ISBE, 100 N. First St., Springfield IL 62777-0001, 217/782-7702, E-mail: rules@isbe.net

UNEMPLOYMENT INSURANCE

The DEPARTMENT OF EMPLOYMENT SECURITY adopted amendments for the following 4 Parts, all effective 1/24/05: "Claims, Adjudication, Appeals and Hearings" (56 Ill Adm Code 2720); "Notices, Records, Reports" (56 Ill Adm Code 2760); "Claimant's Availability for Work, Ability to Work and Active Search for Work" (56 Ill Adm Code 2865); and

"Disqualifying Income and Reduced Benefits" (56 Ill Adm Code 2920). Part 2720 amendments increase from \$50/hr. to \$150/hr. the maximum hourly amount that an attorney may charge without prior Board of Review approval for representing a claimant in a DES hearing. Additional changes specify that DES has 3 years rather than 2 years to reconsider a claimant's benefit eligibility when the issue involves misstated earnings, and DES has 3 years rather than one year when a back-pay award is the issue. Part 2760 amendments add submittal of a "Report to Determine Succession" when an employing unit succeeds to substantially all, or a severable portion of, assets of an organization, trade, or business. The 120-day maximum reporting period for a successor employing unit to notify DES in order to obtain the lower contribution rate of the predecessor employing unit is stricken. New text gives examples of when an employer ceases to be an "employing unit" or resumes being an employing unit for unemployment insurance coverage purposes. Also, examples are added to explain penalty assessments for failing to timely file quarterly employer reports and to explain that a waiver of electronic reporting requirements applies to reports due in the subsequent calendar year for the waiver year. A change since 1st Notice strikes an obsolete 1994 waiver provision. Part 2865 amendments expand the list of exemptions from the requirement that an unemployment insurance claimant must register with the Illinois Employment Service Office to include seasonal workers who have a reasonable expectation of returning to the same job (e.g., landscapers), academic workers or non-academic workers between academic terms (e.g., school teachers and school bus drivers), construction workers, claimants enrolled in training, and those who are residents of a neighboring state and have filed a claim in Illinois. Other changes reflect that the applicable federal statute is now the Workforce Partnership Act rather than the Job Training Part-

New Regulations

nership Act (JTPA). An additional Part 2865 change allows a claimant to report some of the required job search information to DES by telephone. Amendments to Part 2920 implement Public Act 93-915, which specifies that unemployment benefits may not be denied or reduced because the employee received payments related to an employer's violation of the State or federal Worker Adjustment and Retraining Notification Act. However, the rulemaking continues to state that amounts paid or payable by an employing unit to an individual in lieu of notice of separation or layoff will be treated as wages with respect to the period of notice. Small businesses, small municipalities, and not-for-profit corporations whose employees are covered by unemployment insurance may be affected by these rulemakings.

Questions/requests for copies of the 4 rulemakings above: Gregory J. Ramel, DES, 33 S. State St., Rm. 937, Chicago IL 60603, 312/793-4240 or 312/793-2333.

TAXES

The DEPARTMENT OF REVENUE adopted amendments for "Service Occupation Tax" (86 Ill Adm Code 140), effective 1/24/05, to implement portions of Public Acts 93-17, 93-23, and 93-24. A similar emergency rulemaking became effective 7/1/03 and expired 11/27/03. The amendments terminate the service occupation tax (SOT) exemption, beginning 7/1/03, on sales of low sulfur emission coal-fueled devices; ethyl alcohol distillation machinery and equipment; graphic arts machinery and equipment; oil field exploration, drilling, and production equipment; coal exploration, mining, off-highway hauling, processing, maintenance, and reclamation equipment; aggregate exploration, mining, off-highway hauling, processing, maintenance, and reclamation equipment; and commercial, coin-operated amusement and vending machines. With respect to gasohol, the amendments specify that,

beginning 7/1/03 and through 12/31/13, SOT is based on 80% of the proceeds from gasohol sales. On and after 1/1/14, the tax will be the 100% rate. However, the rulemaking also specifies that if SOT is ever imposed at a rate of 1.25%, the tax will apply to 100% of gasohol sales. New fuels are added to the Part and include majority blended ethanol, biodiesel blends, and 100% biodiesel. Some biodiesel blends (no more than 10% biodiesel) are treated the same as gasohol. Majority blended ethanol, 100% biodiesel fuels, and biodiesel blends with more than 10% biodiesel fuel are exempt from SOT through 12/31/13. SOT on these fuels will be based on 100% of proceeds of sales on and after 1/1/14. The rulemaking also strikes a rolling stock tax exemption for certain motor vehicles, trailers, and repair and replacement parts for those motor vehicles and trailers that has been in effect since 8/14/99. The exemption applied to vehicles that carry persons or property for hire in interstate commerce. Those affected by these amendments include those businesses in the fields listed above.

Questions/requests for copies Terry D. Charlton, DOR, Legal Services Office, 101 W. Jefferson, Springfield IL 62794, 217/782-2844.

SOS POLICE

The SECRETARY OF STATE adopted an amendment for rules titled "General Rules, Definitions" (92 Ill Adm Code 1000), effective 1/20/05, to change the regulation stating that only SOS police "command personnel" (director, chief deputy director, deputy director, and the personnel and finance management administrators) may conduct the necessary oral interview required for promotion to the rank of investigator sergeant. The rulemaking broadens the pool of persons qualified to conduct these interviews by adding sworn officers at the investigator sergeant grade to the command personnel who already conduct the interviews.

TRUCK FEES

SOS also adopted an amendment for "Collection of Fees" (92 Ill Adm Code 1003), effective 1/20/05, to increase the fees paid by truck licensees for "on-the-site" audits, as required by Public Act 93-32. For trucking firms that are registered under the "International Registration Plan" (IRP) and are found to owe funds to either Illinois or another IRP jurisdiction, the audit fee is increased from \$50 to \$100/day and from \$25 to \$50/half day regardless of whether an auditor or an auditor trainee conducts the audit. The IRP is an agreement among 48 states (all but Alaska and Hawaii), the District of Columbia, and the Canadian provinces (except the Yukon and the Northwest territories) whereby a motor carrier may register commercial vehicle fleets for travel in all IRP jurisdictions by filing the paperwork with the home (base) jurisdiction. The base jurisdiction collects the full license registration fee and then distributes the fees to the other jurisdictions based on the percentage of miles the carrier will travel, or has traveled, in each jurisdiction. Certain interstate commercial vehicles legally based in Illinois must be registered under the IRP depending upon their weight, number of axles, and area of operation. Any entity that owns such vehicles may be affected by this rulemaking.

Questions/requests for copies of the 2 SOS rulemakings above: Robert Mueller for Part 1000 and Nathan Maddox for Part 1003, Office of the SOS, 298 Howlett Bldg., Springfield IL 62701, 217/785-3094.

STATE EMPLOYEES

The DEPARTMENT OF CENTRAL MANAGEMENT SERVICES adopted a peremptory amendment for "Pay Plan" (80 Ill Adm Code 310), effective 1/19/05, to reflect a corrected collective bargaining agreement between DCMS and the Illinois Association of Nurses that was signed on 1/14/05. The amendment reflects the correct

New Regulations

2.75% salary rate increase, effective 1/1/05, for registered nurse I and II and corrections nurse I and II positions that are subject to the alternative retirement formula. The chart providing the 1/1/05 increase for these positions is separated from other provisions covered in the salary tables.

Questions/requests for copies: Dawn DeFraties, DCMS, 503 Stratton Bldg, Springfield IL 62706, 217/524-8773, Fax 217/558-4497.

MEDICAL PROGRAMS

The DEPARTMENT OF PUBLIC AID adopted emergency amendments for "Specialized Health Care Delivery Systems" (89 Ill Adm Code 146), effective 1/21/05, for a maximum of 150 days. Identical proposed amendments appear in this issue of the *Illinois Register*. The rulemakings add regulations for the State Hemophilia Program,

which in the past has been administered by the Department of Human Services pursuant to an inter-agency agreement with DPA. The program will be the payer of last resort, and a participation fee may be required based upon the participating family's income. Topics covered include definitions, patient eligibility criteria, required treatment center services, care evaluations, and home transfusion arrangements. Medical providers of hemophilia services will be affected by these rulemakings.

DPA also adopted emergency amendments for "Hospital Services" (89 Ill Adm Code 148), effective 1/21/05, for a maximum of 150 days. Identical proposed amendments appear in this issue of the *Illinois Register*. Seven hospital quarterly rate adjustment programs are amended to reflect approval by the federal Centers for Medicare and Medicaid Services of the waiver to the State Medicaid Plan. As a result of federal

approval, fiscal year 2004 adjustment payments are prorated for the following 7 programs to reflect 53 days of approved payments added to the fiscal year 2004 level of funding: supplemental tertiary care adjustment payments, Medicaid inpatient utilization rate adjustment payments, Medicaid outpatient utilization rate adjustment payments, outpatient rural hospital adjustment payments, outpatient service adjustment payments, psychiatric base rate adjustment payments, and high-volume adjustment payments. These payments to hospitals must be made by 3/6/05. Medicaid-funded hospitals will be affected by these 2 rulemakings.

Questions/requests for copies/comments concerning the 2 proposed DPA rulemakings above until 3/21/05: Joanne Scattoloni, DPA, 201 S. Grand Ave. E., 3rd Fl, Springfield IL 62763-0002, 217/524-0081.

Proposed Regulations

prior 12 months (currently the prior calendar year). The rulemaking further provides that an individual who performs driver, reader, or notetaker services for a client will be paid an hourly rate at least 20% greater than the Illinois minimum wage rate. The Part 686 rulemaking states that a personal assistant (PA) in the Home Services Program (HSP) may not be reimbursed for services rendered to one or more HSP clients for more than 16 hours in a 24-hour period, but the 16-hr. limitation does not apply to respite services. Also, an exception may be granted under certain emergency conditions that threaten the health, safety, and well-being of the client. Those affected by these 2 rulemakings include service providers under Part 590 and personal assistants under Part 686.

Questions/requests for copies/comments until 3/21/05: Tracie Drew, DHS, 100 S. Grand Ave. E., 3rd Fl, Springfield IL 62762, 217/785-9772.

COAL MINING

The DEPARTMENT OF NATURAL RESOURCES proposed amendments for the following 3 Parts: "Permanent Program Performance Standards – Surface Mining Activities" (62 Ill Adm Code 1816), "Permanent Program Performance Standards – Underground Mining Operations" (62 Ill Adm Code 1817), and "Special Program Performance Standards – Operations on Prime Farmland" (62 Ill Adm Code 1823). The Part 1816 rulemaking concerns standards for measuring successful revegetation of mined land. The amendments strike obsolete or redundant text,

specify that the "Optimum Crop Productivity Ratings for Illinois Soil" (published by the University of Illinois) is the reference document that lists required components of the "soil master file", and strike oats from crops used for revegetation purposes. A new "alternative" formula to the current agricultural lands productivity formula showing farmland revegetation is added. If this "alternative" formula is chosen by the permittee (coal-mining company), it may not be modified without approval from the Department. While a minimum of one successful corn crop year must be demonstrated in order to use either formula, if deep tillage has been completed to a minimum depth of 36" prior to bond release, an applicant may use more than one successful year of hay or wheat

Proposed Regulations

as an additional productivity demonstration. (Oats is stricken as a crop choice for this purpose.) In addition, the amendments specify that adjustments for abnormal or catastrophic growing conditions (currently only abnormal) may be accepted by DNR if they are certified by an American Society of Agronomy certified professional or National Association of State Departments of Agriculture "crop enumerator", whose abilities were previously approved by the Department, rather than certified by a federally certified crop adjuster. The amendments also provide that if official county crop yields are unavailable for a specific crop in a given year, DNR, in consultation with the permittee and with the Department of Agriculture's concurrence, will substitute a county crop yield from an adjacent county with similar soils if similar weather conditions prevailed. Other changes concern moisture percentages and average row widths. Amendments to Parts 1817 and 1823 apply the "alternative" formula provisions to their respective revegetation programs. Those affected by these rulemakings include coal-mine operators.

Questions/requests for copies/comments concerning the 3 rulemakings above until 3/21/05: Jack Price, DNR, One Natural Resources Way, Springfield IL 62702-1271, 217/782-1809.

LONG-TERM CARE

The DEPARTMENT OF PUBLIC HEALTH proposed amendments for the following 5 Parts: "Skilled Nursing and Intermediate Care Facilities Code" (77 Ill Adm Code 300), "Sheltered Care Facilities Code" (77 Ill Adm Code 330), "Illinois Veterans' Homes Code" (77 Ill Adm Code 340), "Intermediate Care for the Developmentally Disabled Facilities Code" (77 Ill Adm Code 350), and "Long-Term Care for Under Age 22 Facilities Code" (77

Ill. Adm. Code 390). The Part 300, 330, and 340 rulemakings implement the portion of Public Act 93-841 that changes the current methodology used to determine annual license fees (based on capacity) to a flat \$995/year fee. An additional Part 330 amendment strikes the requirement that a license application for a new sheltered care facility be accompanied by a permit issued by the Health Facilities Planning Board. Facilities regulated under Parts 350 and 390, which are assessed an amount equal to 6% of their adjusted gross revenue for developmentally disabled care for each preceding fiscal year, are exempt from the annual license fee. Small businesses, small municipalities, and not-for-profit corporations that own or operate facilities covered under these 5 Parts are affected by these rulemakings.

Questions/requests for copies/comments concerning the 5 rulemakings above until 3/21/05: Susan Meister, DPH, 535 W. Jefferson St., 5th Fl., Springfield IL 62761, 217/782-2043, E-mail: rules@idph.state.il.us

HORSE RACING

The ILLINOIS RACING BOARD proposed amendments for the following 4 Parts: "Definitions" (11 Ill Adm Code 210), "Prohibited Conduct" (11 Ill Adm Code 423), "Race Track Operators and Their Duties" (11 Ill Adm Code 1305), and "Disclosure Rules" (11 Ill Adm Code 1437). The Part 210 amendments change the definition of "minor" from a person under the age of 17 to under the age of 18, strike the definitions for "length of race" and "racing date", and update the definitions for "age" of a horse, "entry", and "paddock". According to the IRB, these changes are necessary to maintain consistency with legislative and statutory usage. A new section is added to Part 423 that places a blanket prohibition on contributing in any manner to a public official or to a political

candidate or nominee by an officer, director, or holder or controller of 5% or more interest in an IRB-licensed organization or concession. The amendment further specifies that violations are grounds for license suspension or revocation, racing date denial or revocation, or any other "appropriate remedy". More broadly applicable sections prohibiting political contributions are stricken in Parts 1305 and 1437.

Questions/requests for copies/comments concerning the 4 rulemakings above until 3/21/05: Mickey Ezzo, IRB, 100 W. Randolph, Ste. 7-701, Chicago IL 60601, 312/814-5017.

TAXES

The DEPARTMENT OF REVENUE proposed an amendment for "Retailers' Occupation Tax" (86 Ill Adm Code 130) to allow the Department to post a notice at any place of business that has had its DOR certificate of registration revoked. A business selling tangible personal property at retail is required by statute to maintain a certificate of registration in order to engage in business. However, according to DOR, many businesses continue to operate after their certificates of registration are revoked due to a violation of the Act and, thus, incur unpaid tax liability. Small retail businesses that are required to maintain certificates of registration under the Act are affected by this rulemaking.

Questions/requests for copies/comments until 3/21/05: George Logan, DOR, Legal Services Office, 101 W. Jefferson, Springfield IL 62794, 217/782-2844.

The Flinn Report

Illinois General Assembly

Illinois

Regulation

Joint Committee on Administrative Rules
700 Stratton Building Springfield IL 62706

PRSRT STD
U.S. Postage
PAID
Springfield IL
Permit NO. 870

Second Notices

The following rulemakings were moved to second notice this week by the agencies listed below, commencing the JCAR review period. The rulemakings will be considered at JCAR's 2/17/05 meeting in Springfield.

DEPARTMENT OF PUBLIC AID

"Pharmaceutical Assistance Program" (89 Ill Adm Code 119) proposed 10/15/04 (28 Ill Reg 13708)

"Specialized Health Care Delivery Systems" (89 Ill Adm Code 146) proposed 10/29/04 (28 Ill Reg 14087)